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GIFTS TO CHARITIES.

The popular notion of a charitable gift or enterprise includes as an element a benevolent motive, while the legal view regards rather the object sought to be accomplished than the motive which induced it. But it is doubtful whether any accurate discussion of what constitutes a legal charity is possible, if the element of motive is entirely eliminated. Too great stress was, perhaps, placed upon it in *Price v. Maxwell*, 28 Pa. 35, where the court adopted the definition by Mr. Binney that a charity is "whatever is given for the love of God or for the love of your neighbor in the catholic and universal sense—given from these motives and to these ends—free from the stain or taint of every consideration, that is personal, private or selfish." This statement, if accepted as complete, would shut out whole classes of benefactions, which have been uniformly and justly regarded as charities. But it would be unfair to the reputation of that great lawyer to assume that he intended it to go without certain necessary limitations. No human motive, however exalted, is absolutely free from the taint of selfishness, for the simple reason that human nature is unequal to the task of dissociating from its acts the ideas of reward and of personal happiness, both of which are eminently

selfish. What the author of the formula intended to say—and left unsaid, probably, because it was clearly implied—was that the dominant motive to a gift, which is to be held charitable, must be the public rather than a private good. The motive may be a mixed one; it may be compounded in large measure of egotism; but it must have in it some reference to the welfare of the beneficiaries. As was said in *Miller v. Porter*, 53 Pa. 299, “if an act to be a charity must, indeed, be free from *any* taint of selfishness, very much that passes under the name is spurious, whilst the genuine article is so extraordinary a virtue that we ought not to wonder that an inspired apostle ranked it above the Christian graces of faith and hope.” Indeed, it is impossible to conceive of a gift whose purpose is to relieve suffering or to elevate the public taste or to dispel ignorance, which springs from an impulse wholly the reverse of amiable or generous. On the other hand, it is repugnant to the notion of a charity that the motive which prompts it is a desire for pecuniary gain. The question of the motive of the donor has been touched very lightly and very seldom in the decisions by reason of the fact that it was so conspicuously shown in the gifts under review, that it might well have been taken for granted. The definitions which they give of a charity, succinct like that of Lord Camden in *Jones v. Williams*, Amb. 651, “a gift to a general public use which extends to the poor as well as to the rich,” or comprehensive like that given by Gray, J., in *Jackson v. Phillips*, 14 Allen (Mass.), 556, “a gift to be applied consistently with existing laws for the benefit of an indefinite number of persons—either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting to establish themselves for life, or erecting or maintaining public buildings or works, or otherwise lessening the burdens of government,” presuppose a motive not wholly compounded of self-interest. With the exception which is to be noted, it is believed that no gift or scheme has been adjudged charitable, where the motive of the donor or projector was the desire of pecuniary gain. He may have been influenced in some degree by vanity, as in *Miller v.*

Porter, supra, or by the hope of securing incidentally a personal convenience as in *Martin v. McCord*, 5 Watts, 493, but his prevailing motive has always been the public good.

Two Pennsylvania cases may be selected as affording material for the application and illustration of these principles. They were utterly unlike in their circumstances and in the points which they decided, but in both the question was involved as to what constitutes a charity; and they are interesting because one of them touches the belief and practice of a large religious body, and the other distinctly repudiates the motive of the donor as a factor in determining the character of his gift.

In *Rhymer's Appeal*, 93 Pa. 142, a testator had bequeathed a sum of money to be expended in securing Masses for the repose of his soul. The gift was held to be obnoxious to the Statute of 1855, which avoids legacies to charitable or religious uses, when made within a calendar month of the donor's death. The argument of the court was that the saying of Masses was a religious service and that a gift to secure that service was of necessity a gift to a religious use. The act was thus interpreted by the popular meaning of a religious use, which may be roughly said to comprehend any service or act of a religious as opposed to a secular character. As the case was presented, the court was, perhaps, not called upon to discuss the legislative intent, and that question may be regarded as open. The gifts which are avoided by the act are those "for religious or charitable uses." When the legislature thus joined in a common prohibition, two classes of charities, may it not be inferred that it intended to place both on the same technical plane and to subject both to the same technical rules of construction? We have seen that a gift to a charitable use must be for a general good, or "for the benefit of an indefinite number of persons." So a gift, properly speaking, to a religious use, must be equally general. In *McLean v. Wade*, 5 Wheat. 266, it was said that "a religious purpose is a charitable purpose," a proposition which is implied in the definition just quoted that the gift must be intended to benefit its recipients by "bringing their minds under the influence of education

or religion," &c. Mr. Dwarris lays it down as a rule in construing a statute that " words of known legal import are to be considered as having been used in their technical sense, or according to their strict acceptation, unless there appear a manifest intention of using them in their popular sense." (Dwarris on Stat. 199.) It will hardly be argued that the term " charitable uses " was employed by the legislature in its popular signification, because that would have included a gift for the relief of a single individual. Yet respecting a religious use the court say " the service is just the same in kind whether it be designed to promote the spiritual welfare of one or many." This is exactly the popular notion, but it is not the legal. The legal definition is founded upon the distinction between a gift to one and a gift to many. For example, the service is the same in kind where a testator bequeaths a sum of money for the education of a poor neighbor, and where he gives another sum for the schooling of a multitude; but in the one case his gift is technically charitable and in the other it is not. So if the testator in *Rhymer's Appeal* had donated a fund to provide for religious services at the funerals of the poor of his community, the gift would have been, in legal contemplation, a gift to religious uses, and void under the statute. Yet his bequest to pay for the ministrations of a clergyman or the services of a choir at his own funeral, would have been good. In both cases the service would be just the same in kind, because it would be religious; but in the eye of the law, it would be religious only where it was meant to be promiscuous. If again he had directed payment for a single Mass to be said at his obsequies, it could not well have been objected to, because every man has a right to be buried in accordance with the ceremonials of the church of his own faith, so long as they violate no canon of public policy. The point which we would make, is thus put by Woodward, C. J., in *Miller v. Porter*, 53 Pa., 300: " When in law we speak of religious and charitable uses, we mean something more specific and technical than the pervading spirit of Christianity. We mean legal acts done for the promotion of piety among men or for the purpose of relieving their sufferings, enlightening their ignorance and

bettering their condition." And he says; on page 298, "Where the conveyance is to no ecclesiastic or church, or church school or hospital, or for the promotion of religion in any of its forms, or by means of any of its appliances, it cannot be considered a religious use." The inhibition of superstitious uses would not apply, inasmuch as the doctrine of such uses cannot obtain in a country where there is no standard of orthodoxy. But if he could provide for the offering of one Mass, why might he not for the payment of a hundred Masses, limited as they would be to his individual needs? It will be observed that his bequest was not by way of a trust, which if not charitable, would have been void as tending to a perpetuity, but it was, of a principal sum, to be expended for Masses. If the motive, or the purpose which includes the motive of the testator, could have been allowed to operate in this decision, it is hard to see how the gift could be held to be other than non-religious. The thought in his mind was not the advantage of the church, nor the salvation of souls; he provided for his individual benefit and for the safety of his individual soul. Whether moneys received for Masses are a source of revenue to the church did not appear, and the writer does not know; but if they are, they were in this case a mere incident to the gift which could not determine its original complexion. The testator was not influenced by so remote a consideration any more than he would have been in the ultimate benefit to a hospital, if he had directed, among his other debts, that his board and nursing at such an institution should be paid for by his executor. The case may be rested on the ground, which, however, was not taken in the opinion, that the gift was in express terms, to a church, which in itself is a charity, and which in turn impressed its character upon the gift.

McMillen's Appeal, 11 W. N. C. 440, was a severe strain upon the reasoning of the appellate court in *Rhymer's Appeal*. It was the case of a gift by a testatrix, of the residue of her estate, in trust to educate her nephew for the Presbyterian ministry, and then to secure his ordination as a minister, with the proviso that if he should refuse or neglect to qualify him-

self for that vocation, the estate should go to Princeton College to be appropriated to the education of Presbyterian ministers. In the opinion of the court the predominant intent of the donor was to promote the prospects of her nephew by giving him a respectable calling in life ; in view of which, any advantage which might accrue to the church, was to her mind a secondary consideration. Probably the person who would have been most startled by this designation of the purpose of the gift would have been the donor herself. She could have said, and apparently with some show of reason, that both technically and vulgarly her gift was religious in character ; that it was meant to strengthen the church by providing it with a fully-equipped minister ; and that no matter what might be his opportunities in other fields, nor what might be his unfitness for the duties of the sacred office, if the legatee refused to act as her agent in this mission, the gift to him would be forfeited in favor of an institution which would furnish a minister in his stead. The exact distinction between this and the former case was that in this the gift was to an individual for the benefit of the church, and in *Rhymer's Appeal* to the church for the benefit of an individual ; and the decision was that the gift in aid of the church was secular and the gift in aid of the individual, religious.

Boyd v. The Insurance Patrol, 113 Pa. 269, and 120 Pa. 624, was the case of a corporation whose chartered purpose was "to protect and save life and property in or contiguous to burning buildings, and to remove and take charge of such property or any part thereof when necessary." An injury resulting in death having been inflicted by the careless act of one of its employees in the course of his employment and an action for damages having been instituted, it was decided that the corporation was a charity and therefore exempt from the rule of respondeat superior. The Fire Patrol was the creation of the Fire Insurance Companies of Philadelphia, and the project originated in their desire to lessen their risks by minimizing the destruction of property by fire. The saving of life was rather an incident of its work than a formal purpose,

the charter giving to the superintendent and patrol power "to enter any building on fire or which may be exposed to or in danger of damage from fire or water, and at once proceed to protect and endeavor to save the *property* therein and to remove such property or any part thereof." The institution was maintained by the contributions of the Insurance Companies and brokers. The case is important, because it is the first in Pennsylvania in which the motive to a gift was held to be utterly irrelevant in determining whether the gift is charitable or otherwise. The work wrought by the organization was so eminently and impartially useful, that it would seem ungracious to challenge the motives of its projectors. Yet, if we understand the definition given by the court, while it expressly excludes the motive of the donor, it nevertheless admits the necessity of resorting to his motive, in testing the character of his gift. The court say: "The true test of a legal public charity is the object sought to be attained; the purpose to which the money is to be applied, not the motive of the donor." What is the meaning of "purpose?" Worcester defines it to be "that which one sets before himself to be reached or accomplished, the final cause," and he defines motive as "the cause, the reason, the principle." When we speak of the purpose of an enterprise we do not mean its professed purpose, nor what may be called its secondary purpose; but we mean its ultimate and underlying purpose, and in that resides its motive, or rather that is its motive. The ultimate thing which was sought to be reached by the Insurance Patrol was the saving of expense to its contributors; and whether this thing be called its purpose or cause or reason, it is in the last analysis its motive. But if the purpose was one of pecuniary gain, the enterprise, however beneficent, was not a charity. This is precisely the position taken by the Supreme Court when the case was first before it. "But that which is the purpose of a public charity may be the distinctive purpose of a trading corporation, out of which it is proposed to realize profits; it is not the object alone of a corporation which makes it charitable within the meaning of the law, it is the mode in which that object is sought to be attained as well as

the purpose for which it is pursued. A private corporation exercising a public function, or engaged in charitable work for private gain, can certainly, in no sense, be characterized either as a public agent or as a public charitable institution."

An illustration may be used to point this argument. Several railroad companies may at vast expense, by their mutual contributions to a common fund, open and maintain a park for the entertainment of the public, the entrance to which and the use of which shall be absolutely free to all. They may advertise its purpose to be the welfare of the public, and the enterprise may actually result in a positive gain to the health and happiness of the community. The test laid down in *Patrol v. Boyd*, would make this enterprise a public charity. The object sought to be attained was the recreation of the public; the purpose to which the money of the contributors was to be applied, was the maintenance of the park; and the motive of the donors was to go for nothing. Yet the final cause, the impulse to which all other considerations bent, for the establishment of the fund, was to stimulate travel on the roads of the contributors and to enhance their stock dividends. This impulse, described as it may be by any term which human ingenuity can invent, will after all other phraseology shall be exhausted, remain the motive of the projectors. With this motive in evidence it is clear that the avowed purpose of benefiting the public, and even the beneficent results of the enterprise could not avail to relieve the fund from responsibility for the negligent acts of those who superintended the park. The parallel between the imaginary corporation and the Patrol Company is a close one. In both the proclaimed purpose, the public benefit, was the same; the contributions of money in both were applied to that end; in both the results were beneficial; and if the motive were discarded, the enterprise of the railroad companies was as truly a charity as that of the insurance agents. There is absolutely nothing by which to distinguish between them. Superior merit cannot attach to the Patrol because it was impartial in its work and sought to save imperilled property whether it belonged to its own insurers or to strangers; the railroad companies were equally

generous in opening their park to pedestrians as freely as to the patrons of their cars. But in filling the resort with visitors, the companies helped to fill their own conveyances and to swell their profits; and in lowering the fire risk, the insurance men lowered their expenses, and in that way enlarged their dividends.

The volunteer association, in *Humane Fire Company's Appeal*, 88 Pa. 389, was a charity. Why? Because its object was to extinguish fires, and the purpose for which the moneys donated to it was in furtherance of that object? No, but because the motive of the donors was free from a mercenary taint. Instantly when a motive, purely of self-interest, came into play, as it would if the association had sought only to earn for its subscribers and members, a bounty offered by the State or municipality, where a conflagration was stopped, the undertaking would cease to be charitable, in legal estimation. This was strongly put by Mitchell, J., whose opinion was adopted in *Donohugh's Appeal*, 86 Pa. 312: "The moment the word (charity) is used in connection with the present subject-matter of charitable gifts or charitable institutions, the popular as well as legal mind takes in at once its wider scope of good will, benevolence, desire to add to the happiness or improvement of our fellow-beings." And the court proceeded to define as charities "private institutions for purposes of purely public charity, not administered for private gain."

A final consideration arises in connection with the cessation of the work of these organizations. It is at least doubtful, whether, supposing the buildings and paraphernalia used were costly, the contributing companies ever contemplated the relinquishing of their title to the property. If they did not, their undertaking was not legally a charity. Certainly no such intent could be ascribed to the originators of the supposed Park. But if either that scheme or the Patrol is a charity, it will not be destroyed by reason of any failure in the mode by which it was designed to be carried out; and under the doctrine of *cy pres*, which, to this extent, at least, has been enforced in Pennsylvania, equity will substitute another mode

which shall be consonant with the donors' intention : *City v. Girard*, 45 Pa. 27.

The constitution of the Patrol was unique in this, that the organization in itself considered, and throwing out all reference to the means and agencies by which its operations were propelled, embodied all the features of a charity. It issued no stock and it earned no revenues, and its work resulted in the saving of property and incidentally, perhaps, of life. It was proper, therefore, that every technicality of the law should be invoked to save it from the loss or embarrassment which might follow if it were held to be other than a legal charity. Given such a charter and such results, the legal presumption would be that the motives which led to its establishment were disinterested. But it is unsafe to say that, in a case where the motives of the donor are divulged, they may be utterly disregarded.

Under the guise of a separate and apparently independent organization, ostensibly entrusted with so much of their work as enures to the benefit of the public, trading corporations may escape with absolute impunity the liability which they would otherwise incur through the negligence of their agents. Take, for instance, again, the supposititious case of the Park. It would be easy for the railway companies to place it under the nominal control of a corporation which should have no list of stockholders, and should declare no dividends, and which should apparently cater solely to the public welfare. Yet, if an accident caused by the criminal mismanagement of the officials of the Park should result in the loss of many lives, ought the responsibility in damages to be shifted from those for whose pecuniary benefit the Park was really run, upon the technical plea that the Park corporation itself returned no dividends in cash, and was, therefore, a charity? In this connection, *Chapin v. Y. M. C. A.*, 165 Mass. 280, may be profitably read. All that we have claimed as the genuine mark of a charity is summed up in this extract from the opinion in *McDonald v. Mass. Hospital*, 120 Mass. 435 : "The corporation has no capital stock, no provision for making dividends or profits, and whatever it may receive from any

source it holds in trust to be devoted to the object of sustaining the hospital and increasing its benefit to the public, by extending or improving its accommodations and diminishing its expenses. Its funds are derived mainly from public and private charity ; its affairs are conducted for a great public purpose, that of administering to the comfort of the sick, *without any expectation on the part of those immediately interested in the corporation, of receiving any compensation which will enure to their own benefit*, and without any right to receive such compensation. This establishes its character as a public charity.”

W. N. Ashman.

Philadelphia, October, 1896.